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September 13, 2005

BY ELECTRONIC AND OVERNIGHT MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 04-33

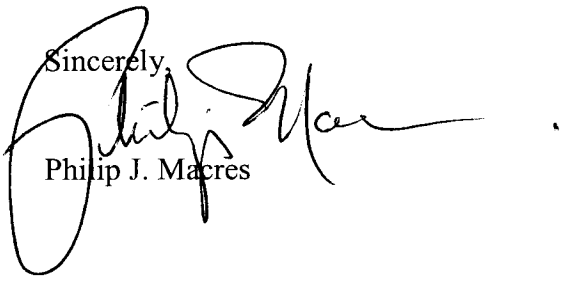
Dear Secretary Cottrell:

Attached hereto for filing in the above-referenced proceeding is CTC and Lightship's Opposition to Motion of Verizon Massachusetts for Partial Clarification and/or Reconsideration of Arbitration Order.

An original and nine (9) additional copies of this filing are attached. Also attached is an extra copy of this filing. Please date-stamp it and return it in the attached, postage prepaid envelope provided. In addition, please note that a copy of this filing will be submitted to the Department in electronic format by E-mail attachment to dte.efiling@state.mass.us.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Philip J. Macres

Enclosure

cc: Tina Chin, Arbitrator
Jesse Reyes, Arbitrator
DTE 04-33 Service List

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	**D.T.E. 04-33**

CTC AND LIGHTSHIP'S OPPOSITION TO MOTION OF VERIZON MASSACHUSETTS FOR PARTIAL CLARIFICATION AND/OR RECONSIDERATION OF ARBITRATION ORDER

CTC Communications Corp. ("CTC") and Lightship Telecom, LLC ("Lightship") hereby submit their Opposition to Verizon's Motion for Clarification and/or Reconsideration. As discussed below, various aspects of Verizon's motion should be denied.

I. DISCUSSION

A. The Department Correctly Held that i the CTC and Lightship Agreements Do Not Require A New Amendment to Implement Conversions, Commingling, and Combinations.

Verizon objects to the Department's holding that "for those carriers that have 'self-executing' agreements that do not require negotiation and arbitration to implement changes of law (see discussion in Section IV, *supra*), Verizon was obligated to provide conversions, commingling, and combinations on October 2, 2003, the effective date of the *Triennial Review Order*."[1] It asks the Department to "clarify" that it meant exactly the opposite.[2]

There are at least three reasons for denying this request. First, regardless of Verizon's argument, CLECs were entitled to commingling and conversions as of October 2, 2003 regardless of the

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[1] Verizon Motion at 7.

[2] *Id.* at 7-8.

change of law terms of their agreements, because there has been no change in law as to Verizon's basic obligation to convert services obtained under tariff to UNEs. The Wireline Competition Bureau's Order denying Verizon's Petition for Stay of the *Triennial Review Remand Order*,[3] in which Verizon challenged the FCC's policy allowing CLECs to "convert" services to UNEs, directly refutes Verizon's theory.[4] In the relevant passage, the Bureau stated that the FCC:

> did not reverse a previous policy barring conversions where competitive LECs were otherwise eligible for the UNE at issue. In fact, the Commission *has never adopted such a bar.* The *Triennial Review Remand Order* instead merely reaffirmed the [FCC's] preexisting policy allowing conversions of services obtained under tariff to UNE arrangements. That policy was reviewed by the U.S. Court of Appeals for the District of Columbia Circuit, which left the Commission's conversion rules undisturbed. The 'stay' Verizon seeks thus would effect – not prevent – a change in *status quo.*[5]

Since the FCC merely confirmed a preexisting policy, no amendment should be required to obtain conversions.

Second, even if Verizon's obligation to permit combinations and commingling were a new requirement of applicable law, the terms of existing "self-executing" agreements already provide for the implementation of such new requirements; therefore, there is no need for further amendment to the contract to say what it says already. CTC's and Lightship's UNE Remand Amendments already state that "Verizon shall be obligated to provide a Combination only to the extent provision of such combi-

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[3] *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 19 FCC Rcd 16783, FCC 04-290 (rel. Feb. 4, 2005) ("*TRRO*" or "*Triennial Review Remand Order*") (subsequent history omitted).

[4] *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* WC Docket No. 04-313, CC Docket No. 01-338, Order, DA 05-675, ¶ 1 (rel. March 14, 2005) ("*Stay Denial Order*").

[5] *Stay Denial Order*, ¶ 3 (emphasis added).

nation is required by Applicable Law."[6] Thus, contrary to Verizon's claims, Section § 4.6 (or § 27.3 of the Lightship or § 8.3 of the CTC agreements) do not apply[7] because, by design, the UNE Remand Amendments already specify that Verizon must provision combinations in accordance with Applicable Law. Once the *TRO's* new service eligibility criteria went into effect on October 2, 2003, they automatically went into effect under the combination provisions of the amendment.

Third, Verizon's implication that the CTC and Lightship agreements need to be amended to reflect the *TRO*'s new service eligibility criteria makes no sense, because the old criteria were not set forth in the agreements either. The FCC's pre-*TRO* service eligibility criteria for certain combinations

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[6] CTC UNE Remand Amendment, § 2.3 (attached hereto as Exhibit A); Lightship UNE Remand Amendment, § 2.3 (attached hereto as Exhibit B); Lightship's underlying interconnection agreement contains similar provisions. See Lightship ICA, § 11.11 (attached hereto as Exhibit C). Neither the CTC or Lightship interconnection agreements limit the definition of a "Combination" to the combining or joining of 251(c)(3) UNEs. Combinations could include the combining of special access facilities obtained under tariff with UNEs; however, prior to the *TRO*, Applicable Law did not require Verizon to provision commingled combinations. Commingling is nothing more than a § 251(c)(3) UNE combined with another facility or service, such as a tariffed special access service. *See* 47 C.F.R. § 51.318; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, (2003), corrected by Errata, 18 FCC Rcd 19020, ¶ 579 (2003) ("*TRO*" or "*Triennial Review Order*") (subsequent history omitted).

[7] The Department held that under the Group 1 agreements, "the duty to negotiate under these provisions applies only when the change of law results in an ongoing right or obligation under the interconnection agreement, not when it eliminates entirely such rights or obligations." Order at 16. It further held that Verizon may discontinue a de-listed UNE without an amendment to Group 2 contracts as an exception to the general provision requiring negotiation and amendment in the event of a change of law that "materially affects" the parties contractual rights. *Id.* at 21. As for Group 3 agreements, the Department rendered the same interpretation as it did for the Group 1 and 2 agreements. *Id.* at 25.

are not specifically included in the CTC and Lightship UNE Remand Amendments; however, they applied to such combinations because that was the "Applicable Law."[8]

There are good reasons these amendments do not include such detailed terms—when the pre-*TRO* eligibility criteria were established, the FCC held that "Verizon is required ... to promptly implement the conversion of eligible special access circuits to EELs upon request."[9] The FCC emphasized that "*Verizon is not permitted to require CLECs to execute unneeded amendments or amendments with unfavorable terms as a condition to the conversion of their special access circuits to EELs.*"[10] To the extent the *TRO* changed the applicable law upon which Verizon must provision combinations (*i.e.*, it established new service eligibility criteria) and since the amendment requires Verizon to provision combinations in accordance with Applicable Law, Verizon's obligations to provision combinations in accordance with the new service eligibility criteria automatically changed when the *TRO* went into effect on October 2, 2003.[11]

For these reasons, Verizon's request for clarification should be rejected.

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[8] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587, 9598, ¶ 20-21 (2000) ("*Supplemental Order Clarification*"), *aff'd CompTel v. FCC*, 309 F.3d 3 (D.C. Cir. 2002).

[9] *Net2000 Communications, Inc. v. Verizon-Washington, D.C., Inc.*, File No. EB-00-018, Memorandum Opinion and Order, 17 FCC Rcd 1150, FCC 01-381, ¶ 37 (2002) (citing *UNE Remand Order*, 15 FCC Rcd 3696, 3909, ¶ 480; *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9604, ¶ 33).

[10] *Net2000 Communications*, 17 FCC Rcd 1150, ¶ 37.

[11] To be clear, it is CTC and Lightship's position that with respect to certain aspects of the *TRO* and the *TRRO* that relieved Verizon of its obligation under § 251(c)(3) to provide certain facilities on an unbundled basis (*e.g.*, loops and transport) in certain circumstances, the CTC and Lightship agreements require an amendment before such aspects of these FCC orders go into effect. *See* CTC and Lightship's Motion for Reconsideration and Clarification at 11-16. However, for the above reasons, no amendment is required for the decisions in the *TRO* that pertain to conversions, commingling, and combinations to become effective under these agreements.

B. Verizon's Suggestion that the Relevant Date for Determining Whether a Wire Center Satisfies the FCC's Non-Impairment Criteria for UNE Loops and Dedicated Transport is the Effective Date of the *TRRO* (March 11, 2005) Should Be Denied.

Verizon requests that the Department clarify that "nothing in the Order is intended to vary from the FCC's transition rules or to imply that the relevant date for assessing whether a wire center satisfies the FCC's non-impairment criteria is anything other than March 11, 2005 (unless a wire center first satisfies the FCC's criteria at a later date)."[12] It also requests that the Department further clarify that "the CLECs' proposed definition of 'affiliate' is rejected" for determining the number of fiber-based collocators in a given wire center because Verizon and MCI were not affiliates as of the March 11, 2005.[13] It further urges Department clarification that the "back-up data Verizon MA must provide to a requesting CLEC need only be updated beyond March 11, 2005, if and when Verizon MA determines that the relevant wire center first met the FCC's non-impairment criteria at a later time."[14]

Such clarifications are inappropriate and unwarranted. As the Department held, "the CLECs' concerns regarding the ... wire center designations are minimized because wire center designations will not be litigated until a dispute arises."[15] CLECs sought to have the Department litigate these issues in this proceeding; however, Verizon adamantly objected. Verizon's clarification request is a nothing more than a backdoor attempt for a blind endorsement of Verizon's own list of wire centers that it believes meets the non-impairment thresholds, without any Department review of that list.

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[12] Verizon Motion at 12.

[13] *Id.*

[14] *Id.*

[15] Order at 286.

The Department must realize that sometime after March 11, 2005, Verizon may discover that assumptions it employed when it established the March 11, 2005 list were flawed or the information it relied on was incorrect. However, a literal interpretation of Verizon's request is that it would not be required to provide a corrected, updated list to CLECs along with the supporting documentation even if the errors were identified by the Department. For example, after providing its underlying data to a hearing examiner at the Maine Public Service Commission, Verizon determined that its inclusion of a central office in Augusta, Maine should be removed from its Tier 2 transport list.[16] Verizon ME revised its Maine list but unlike Maine, Verizon wishes to freeze its Massachusetts list. Similarly, SBC and BellSouth also have removed certain wire centers from their lists after further scrutiny.

Moreover, CLECs have a strong basis for believing that Verizon-MA's list is flawed. During the New Hampshire proceeding that is investigating Verizon-NH's wire center lists,[17] Verizon-NH admitted during technical conferences that Verizon took certain liberties in interpreting and applying the FCC's non-impairment loop and transport wire center thresholds. For instance, Verizon counted CLECs that are collocated in Verizon wire centers as fiber-based collocators even though they do not own their own fiber or lease it on an IRU basis from another carrier.[18] It also included residential UNE-P and residential loops in determining the total number

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[16] *See* Letter from Dee May, Vice President Federal Regulatory Affairs, Verizon Communications to Marlene Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket No. 01-338 (dated March 4, 2005).

[17] *Verizon New Hampshire Wire Center Investigation*, DT 05-083.

[18] To be counted as a "fiber-based collocator," the *TRRO* requires, among other things that the collocator own fiber or have an indefeasible right to use ("IRU") if it does not. *TRRO*, n.292. An indefeasible right of use ("IRU") is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use fiber optic strands, circuitry or bandwidth for all, or almost all, of the asset's useful life. Michael J. Lichtenstein & Charles A. Rohe, *The Treatment of IRUs in Bankruptcy Proceedings*, J. Bankr. L. & Prac., Nov./Dec. 2001, at 83-84. *See Virgin Islands Tele-*

of "business lines" in a wire center, even though the first sentence of the *TRRO's* definition of business line states that, "A business line is an incumbent LEC-owned switched access line *used to serve a business customer*, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC.[19]

Under these circumstances, it would be unreasonable and contrary to the *TRRO* for the Department to close the books on Verizon's wire center list before the list is ever examined. Instead, the determinations of non-impairment would be made through the self-certification process set forth in ¶ 234 of the *TRRO*, at the time such self-certifications are made. Alternatively, the Department could open a generic proceeding and investigate whether all the wire centers that Verizon included on its list as satisfying the *TRRO's* non-impairment loop and dedicated transport thresholds actually do. But in either event, Verizon's attempt to resolve this issue in its favor here is inappropriate and contrary to federal law.

C. Verizon's Request for Three Months or More to Ponder CLEC Self-Certifications Would Paralyze CLEC Marketing and Deployment and is Wholly Unreasonable and Unnecessary.

Verizon requests reconsideration of the Department's decision that gives Verizon 30 days to dispute a CLEC's self-certification.[20] Instead, it requests a prolonged period of time to dispute such an order that is limited only by the applicable backbilling statute of limitations.[21] In the

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phone Corp. v. F.C.C., 198 F.3d 921, 922 n. 2 (D.C. Cir. 1999)(quoting *Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices For Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers*, 8 F.C.C. Rcd. 4173, n. 6 (1993)). It is frequently said that the holder of an IRU possesses most of the "indicia of ownership" of a telecommunications network asset, but not actual control of the facility. *Id. See e.g., Western Union Intern. Inc. v. F.C.C.*, 568 F.2d 1012, 1015 (2d Cir. 1997)(referring to an IRU as an ownership interest).

[19] *See* 47 C.F.R. § 51.5 (emphasis added).

[20] Verizon Motion at 12-13.

[21] Verizon Motion at 13-14.

alternative, Verizon asks that the Department give it 90 days to dispute a CLEC's certification because its monthly billing reports trigger the preparation of a dispute notice letter.[22]

Verizon's reconsideration request should be denied. As explained in the CCC's initial brief, a 30-day period is generous since the Michigan Public Service Commission has already ordered Verizon and SBC to file such disputes within 10 days.[23] Moreover, SBC has voluntarily agreed to the 30-day period chosen by the Department here, and has chosen not even to arbitrate for a longer period such as the open-ended blank check sought by Verizon here.

CLECs need to know sooner rather than later if Verizon plans to dispute a request for a UNE so that they can properly market and price their offerings. Verizon should not be allowed to sit on its hands for 90 days or even longer before filing a dispute and exposing the CLEC to tremendous financial liabilities that it would likely not be able to pass on to its customers that may be utilizing such facilities. Contrary to Verizon's claims, the Department's decision that 30 days is "reasonable" and "will also prevent accrual of large retroactive bills if Verizon delays challenging a CLEC request for months or even years" is sound and should not be disturbed.[24]

Verizon further argues that the Department's decision was based on insufficient information because Verizon's review of its monthly billing reports that triggers the preparation of its dispute notice letter are "generated once a month" and that "an erroneous CLEC certification received at the beginning of the month would not even trigger the notice letter until after the 30-

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[22] Verizon Motion at 14.

[23] *In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters Issued by SBC and Verizon*, Case No. U-14447, Order and Notice of Adoption of a Dispute Resolution Procedure, at 6 (Mich. P.U.C. Mar. 29, 2005) (attached to CCC's Initial Brief as Exhibit Q).

[24] Order at 287-88.

day period."[25] Verizon conveniently ignores the fact that it has the capability to generate pre-bills, on a hourly, daily or weekly basis, and use other means to trigger when a dispute notice letter is sent. Besides, Verizon already has to implement a much more time sensitive solution in Michigan since it has 10 calendar days to send out a dispute notice letter. Given this, it could implement such a time sensitive approach in Massachusetts but will have 30 days to send out such a letter.

Finally, Verizon's belated criticisms that 30 days is unreasonable are untimely. The CCC proposed this amount of time to Verizon in its *TRRO* Amendment and advocated for it in its initial brief.[26] Verizon never provided any basis for opposing this proposal in its reply briefs nor did it provide a counter proposal. Because of this, the Department should not give any weight to any unsupported arguments it makes now. Accordingly, the Department should deny Verizon's reconsideration and clarification requests.

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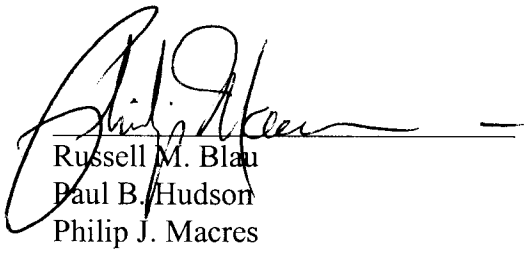
[25] Verizon Motion at 14.

[26] *See* CCC *TRRO* § 8.3; CCC Initial Brief at 128.

II. CONCLUSION

Wherefore, CTC and Lightship respectfully request that the Department deny the Motion of Verizon Massachusetts for Clarification and/or Reconsideration of Arbitration Order as discussed herein.

Respectfully submitted,



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Counsel for CTC Communications Corp. and Lightship Telecom, LLC

Dated: September 14, 2005

EXHIBIT A

to the conditions set forth in this Section 1 of this UNE Remand Attachment, Verizon shall provide access to Verizon's Network Elements and Combinations subject to charges based on rates and/or rate structures that are consistent with Applicable Law (collectively, the "Rates" and, individually, a "Rate"). Certain of these Rates are set forth in the Pricing Appendix to the UNE Remand Attachment, which Rates Verizon shall charge CTC and CTC agrees to pay to Verizon. CTC acknowledges, however, that certain Rates are not set forth in the Pricing Appendix to the UNE Remand Attachment as of the effective date of this UNE Remand Attachment ("Effective Date") but that Verizon is developing such Rates and Verizon has not finished developing such Rates as of the Effective Date. When Verizon finishes developing a Rate not included in the Pricing Appendix to the UNE Remand Attachment as of the Effective Date, Verizon shall notify CTC in writing of such Rate in accordance with, and subject to, the notices provision of the Agreement and thereafter shall bill CTC, and CTC shall pay to Verizon, for services provided under this UNE Remand Attachment on the Effective Date and thereafter in accordance with such Rate. Any notice provided by Verizon to CTC pursuant to this Section 1.9 shall be deemed to be a part of the Pricing Appendix to the UNE Remand Attachment immediately after Verizon sends such notice to CTC and thereafter.

2. **UNE Remand Provisions**

2.1. Subject to the conditions set forth in Section 1, and at the request of CTC, Verizon shall permit CTC to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide CTC with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.2. Network Interface Device

Subject to the conditions set forth in Section 1, and at the request of CTC, Verizon shall permit CTC to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide CTC with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.3. Combinations

Verizon's provision of Combinations to CTC shall be subject to the conditions set forth in Section 1. Verizon shall be obligated to provide a Combination only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to CTC, Verizon shall provide such Combination in accordance with the terms, conditions and prices for such Combination as provided in Verizon's DTE No. 17 Tariff, as amended from time to time. Until any amendment to such tariff filed by Verizon with the Commission that is applicable to Combinations becomes effective, Verizon shall provide Combinations to CTC in accordance with, and subject to, the terms and provisions of such amendment, as amended from time to time.

2.4. Sub-Loop Distribution (USLA)

Subject to the conditions set forth in Section 1, Verizon shall provide CTC with access to a Distribution Sub-Loop (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in

EXHIBIT B

1.9. Notwithstanding anything else set forth in the Agreement, this UNE Remand Attachment or the Pricing Appendix to the UNE Remand Attachment and subject to the conditions set forth in this Section 1 of this UNE Remand Attachment, Verizon shall provide access to Verizon's Network Elements and Combinations subject to charges based on rates and/or rate structures that are consistent with Applicable Law (collectively, the "Rates" and, individually, a "Rate"). Certain of these Rates are set forth in the Pricing Appendix to the UNE Remand Attachment, which Rates Verizon shall charge Lightship and Lightship agrees to pay to Verizon. Lightship acknowledges, however, that certain Rates are not set forth in the Pricing Appendix to the UNE Remand Attachment as of the effective date of this UNE Remand Attachment ("Effective Date") but that Verizon is developing such Rates and Verizon has not finished developing such Rates as of the Effective Date. When Verizon finishes developing a Rate not included in the Pricing Appendix to the UNE Remand Attachment as of the Effective Date, Verizon shall notify Lightship in writing of such Rate in accordance with, and subject to, the notices provision of the Agreement and thereafter shall bill Lightship, and Lightship shall pay to Verizon, for services provided under this UNE Remand Attachment on the Effective Date and thereafter in accordance with such Rate. Any notice provided by Verizon to Lightship pursuant to this Section 1.9 shall be deemed to be a part of the Pricing Appendix to the UNE Remand Attachment immediately after Verizon sends such notice to Lightship and thereafter.

2. UNE Remand Provisions

2.1. Subject to the conditions set forth in Section 1, and at the request of Lightship, Verizon shall permit Lightship to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide Lightship with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.2. Network Interface Device

Subject to the conditions set forth in Section 1, and at the request of Lightship, Verizon shall permit Lightship to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide Lightship with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.3. Combinations

Verizon's provision of Combinations to Lightship shall be subject to the conditions set forth in Section 1. Verizon shall be obligated to provide a Combination only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is .required by Applicable Law to provide a Combination to Lightship, Verizon shall provide such Combination in accordance with the terms, conditions and prices for such Combination as provided in Verizon's DTE No. 17 Tariff, as amended from time to time. Until any amendment to such tariff filed by Verizon with the Commission that is applicable to Combinations becomes effective, Verizon shall provide Combinations to Lightship in accordance with, and subject to, the terms and provisions of such amendment, as amended from time to time.

2.4. Sub-Loop Distribution (USLA)

EXHIBIT C

with appropriate dispatch information based on its test results. If, as the result of Level 3 instructions, BA is erroneously requested to dispatch within the Central Office, BA may levy on Level 3 an appropriate charge. However, if BA imposes any charge on Level 3 under this Section 11.10 and the same trouble recurs and the cause in both instances is determined to be in BA's facilities, then BA shall refund to Level 3 all charges applicable to that trouble that were erroneously levied on and paid by Level 3 to BA plus interest at the rate applicable to refunds of overpayments pursuant to BA's Tariffs.

11.11 Combinations of Network Elements

Notwithstanding anything set forth in this Agreement and subject to the conditions set forth in Section 11.0 hereof, BA shall be obligated to provide a combination of network elements (a "Combination") only to the extent provision of such Combination is required by Applicable Law. To the extent BA is required by Applicable Law to provide a Combination to Level 3, BA shall provide such Combination in accordance with, and subject to, requirements established by BA that are consistent with Applicable Law (such requirements, the "Combo Requirements"). BA shall make the Combo Requirements publicly available in an electronic form.

12.0 RESALE -- SECTIONS 251(c)(4) and 251(b)(1)

12.1 Availability of Retail Rates for Resale

BA shall make available to Level 3 for resale all Telecommunications Services as described in (and to the extent required by) Section 251(c)(4) of the Act, pursuant to the rates, terms and conditions of BA's applicable Tariffs, as may be amended from time to time. Such services shall be provided by BA to Level 3 at parity with the manner in which BA provides Telecommunications Services to its end user Customers in terms of service quality and performance intervals.

12.2 Availability of Wholesale Rates for Resale

BA shall make available to Level 3 for resale all Telecommunications Services that BA provides at retail to Customers that are not Telecommunications Carriers at the retail prices set forth in BA's Tariffs less the wholesale discount set forth in Exhibit A in accordance with Section 251(c)(4) of the Act. Such services shall be provided in accordance with the terms of the applicable retail services Tariff(s).

12.3 Availability of Support Services and Branding for Resale

BA shall make available to Level 3 the various support services for resale described in Schedule 12.3 hereto in accordance with the terms set forth therein. In addition, to the extent required by Applicable Law, upon request by Level 3 and at prices, terms and conditions to be negotiated by Level 3 and BA, BA shall provide BA Retail Telecommunications Services (as defined in Schedule 12.3) that are identified by Level 3's trade name, or that are not identified by trade name, trademark or service mark.